IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7371 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHKUMAR KANTILAL SHAH

Versus

GUJARAT STATE HANDICRAFTS DEVELOPMENT CORP. LTD.

Appearance:

1. Special Civil Application No. 7371 of 2001

MR TR MISHRA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/12/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. H.S. Munshaw learned advocate for the respondent Corporation. In the facts and circumstances of the case, the matter is

taken up for final hearing today.

Brief facts of the present petition are to the effect that the petitioner was on medical leave in the year 1994 to 1996 due to medicine reaction and subsequent several complications. The Managing Director of the respondent has sanctioned the leave on an undertaking that the petitioner shall not avail the medical leave during the remaining period of service till he attains the superannuation age. Accordingly, the petitioner was paid the salary for the period of 130 days and usual regular increments were also granted. However, all of a sudden, the respondent corporation vide order dated 9.5.2001 cancelled the earlier orders and vide order dated 27.6.2001, reduced the basic salary of the petitioner. The petitioner has challenged the said action of the respondent corporation by way of this petition before this Court.

According to Mr. T.R. Mishra, learned advocate the petitioner, the said orders were passed by the respondent corporation without affording any opportunity of hearing and, therefore, said orders are violative of the principles of natural justice and fair play. He has submitted that by order dated 25th June, 1998, the Managing Director of the respondent Corporation had sanctioned medical leave and granted salary for 130 days. However, before cancelling the said order dated 25th June, 1998 by order dated 9.5.2001 and also before reducing the basic salary of the petitioner by order dated 27.6.2001, the respondent Corporation has not given any opportunity of hearing to the petitioner though the orders in question were adversely affecting the petitioner and were against the petitioner. He has submitted that on that short ground alone, the impugned orders dated 9.5.2001 and 27.6.2001 are required to be quashed and set aside. He has also submitted that though the petitioner has actually worked during the period of February, March, April and May, 2001, salary for the said period has not been paid to the petitioner for recovering the amount of leave period in view of the orders dated 9.5.2001 and 27.6.2001. He has submitted that the respondent corporation is required to be directed to pay the salary to the petitioner for the month of February to May, 2001 for which the petitioner has actually worked.

On the other hand, learned advocate Mr. Munshaw appearing for the respondent corporation has submitted that the Corporation is having the power to review the order and in review, orders of cancellation of medical leave dated 9.5.2001 as well as the orders dated

27.6.2001 reducing the basic salary of the petitioner were passed by the corporation but the fact remain that before passing the said orders dated 9.5.2001 and 27.6.2001, the petitioner was not heard by the concerned authority. Mr. Munshaw has, however, submitted that the said orders were passed by the respondent corporation in accordance with law and, therefore, there is no need to give any hearing to the petitioner and, therefore, this Court should not entertain this petition.

I have considered the submissions made by the learned advocates for the parties. Looking to the fact, by order dated 25.6.1998, the Managing Director of the respondent corporation has sanctioned medical leave and has granted salary for 130 days and has released due increments in favour of the petitioner. Thereafter, said orders sanctioning medical leave for a period of 130 days were cancelled by the corporation by order dated 9.5.2001 and by order dated 27.6.2001, basic salary of the petitioner has been reduced without hearing the petitioner and, therefore, said orders are violative of the principles of natural justice. Therefore, only on the ground of violative of the principles of natural justice, said orders are required to be quashed and set aside without observing anything on merits of the matter.

Accordingly, present petition is allowed. Impugned order dated 9.5.2001 Annexure "D" as well as the impugned order dated 27.6.2001 Annexure "E" passed by the respondent Corporation are hereby quashed and set aside. The petitioner is directed to make representation before the respondent Corporation and it is directed to the respondent corporation to pass appropriate orders in the subject matter after affording reasonable opportunity of hearing to the petitioner. It is also directed to the respondent Corporation to consider one more aspect about the salary of the petitioner for a period of February, April and May for which the petitioner has actually worked and to pass appropriate orders in that regard after hearing the petitioner. Such orders are required to be passed by the respondent Corporation within a period of two months from the date of receipt of representation from the petitioner. Rule is accordingly made absolute with no order as to costs. Direct Service is Permitted.

12.12.2001. (H.K. Rathod,J.)
Vyas